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## The Claire Davis School Safety Act: Why Threat Assessments in Schools Will Not Help Colorado

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THE CLAIRE DAVIS SCHOOL SAFETY ACT: WHY THREAT ASSESSMENTS IN SCHOOLS WILL NOT HELP COLORADO

ABSTRACT

The United States is struggling with how to prevent the relatively new phenomenon of mass shootings or attacks, many of them occurring in schools. Colorado addressed this by passing the Claire Davis School Safety Act that allows individuals harmed in acts of school violence to sue the school districts where the incidents occurred. This law intends to help protect students and keep them safe in schools. However, the law not only adds an exception to Colorado’s Governmental Immunity statute but also creates what are commonly known as threat assessments, which are used to identify potential threats in schools and to mitigate any problems or incidents before they occur.

While this process seems safe and helpful on its face, threat assessments are difficult to implement and have the potential to cause serious harm to students. Threat assessments may target certain groups of students who are not actually threats but exhibit similar behaviors, such as students suffering from mental illnesses and students with disabilities. In addition, threat assessments will likely have a disproportionate effect on students of color and will strengthen the already dangerous connection between schools and the juvenile and criminal justice systems.

Threat assessments in schools send the message that schools cannot be safe without increased security, increased police force, and increased fear about school attacks, but that message is incorrect. There are other ways to keep students safe while also protecting their right to a proper education and without causing additional harm. For example, an alternative to the Claire Davis School Safety Act is to create positive school climates where students feel safe, comfortable, and supported in their environments, and, therefore, are more likely to reach out for help before problems become larger issues. Most importantly, another alternative is to shift the focus from what schools can do to prevent these attacks to what state and national governments can do to prevent these attacks by placing the responsibility, not on administrators, teachers, and students, but on the industry that sells and regulates the weapon often used in school shootings—guns.

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## INTRODUCTION

On September 16, 2015, the story of fourteen-year-old Ahmed Mohamed spread quickly across the United States.<sup>1</sup> Mohamed was handcuffed and arrested at MacArthur High School in Irving, Texas, for bringing a homemade clock to school, which officials suspected was actually a bomb.<sup>2</sup> By the end of the day, even President Barack Obama and presidential candidate Hillary Clinton were tweeting about Mohamed and his homemade clock.<sup>3</sup>

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1. Avi Selk, *Ahmed Mohamed Swept up, 'Hoax Bomb' Charges Swept Away as Irving Teen's Story Floods Social Media*, DALL. MORNING NEWS, <http://www.dallasnews.com/news/community-news/northwest-dallas-county/headlines/20150915-irving-9th-grader-arrested-after-taking-homemade-clock-to-school-so-you-tried-to-make-a-bomb.ece> (lasted updated Sept. 17, 2015).

2. *Id.*

3. *Id.*

Officials at Mohamed's school likely reacted with fear and caution because of the heightened anxiety surrounding school safety due to school shootings and other violent incidents that have occurred in schools across the United States. Since 1999, when two students shot and killed thirteen people at Columbine High School in Littleton, Colorado, the United States has witnessed numerous additional tragic incidents of mass school violence.<sup>4</sup> However, handcuffing and arresting individuals at any suspicion—like school officials did to Mohamed—is not the answer. There are more effective ways to prevent school violence and to keep students safe that do not involve suspecting the worst of students and subjecting them to constant analysis and scrutiny.

Instead of moving in this direction, Colorado passed the Claire Davis School Safety Act (the School Safety Act), which allows victims of school violence to sue school districts or charter schools through a limited waiver of governmental immunity,<sup>5</sup> and requires schools to identify and prevent potential threats to avoid school violence and these legal claims.<sup>6</sup> While this law was passed with the good intention to keep students safe, it will be ineffective at preventing school violence, and it will actually harm many students just as the overzealous policy that allowed school officials to handcuff and arrest Ahmed Mohamed harmed him.<sup>7</sup>

While the School Safety Act applies to any act of school violence, this Comment will focus primarily on research surrounding school shootings and on the programs and methods used to identify and monitor students, more commonly referred to as, threat assessments. Part I of this Comment will provide an overview of the School Safety Act. Part II of this Comment will provide background information on Colorado's Governmental Immunity Act, mass shootings in the United States, the history and structure of threat assessments, the Second Amendment and gun culture in the United States, and other countries' approaches to preventing mass shootings. Part III will analyze why this law will be ineffective,

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4. Of the 160 active shooter incidents between 2000 and 2013, thirty-nine occurred at schools, the location with the second highest rate. J. PETE BLAIR & KATHERINE W. SCHWEIT, TEX. STATE UNIV. & FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, A STUDY OF ACTIVE SHOOTER INCIDENTS IN THE UNITED STATES BETWEEN 2000 AND 2013, at 13 (2014), <https://www.fbi.gov/news/stories/2014/september/fbi-releases-study-on-active-shooter-incidents/pdfs/a-study-of-active-shooter-incidents-in-the-u.s.-between-2000-and-2013>.

5. COLO. REV. STAT. § 24-10-106.3(4) (2016). The Act was signed into law on June 3, 2015. S. 15-213, 70th Gen. Assemb., Reg. Sess. (Colo. 2015). It was sponsored by Senators Bill Cadman, Mark Scheffel, Owen Hill, Larry Crowder, Kevin Grantham, Kent Lambert, Kevin Lundberg, Beth Martinez Humenik, Tim Neville, and Laura Woods, and Representatives Dickey Lee Hullinghorst, Crisanta Duran, Daniel Kagan, Jovan Melton, Joseph Salazar, and Jonathan Singer. *Id.*

6. See COLO. REV. STAT. § 22-15-101(1)(a).

7. Mohamed says he will not be returning to his old school after this incident. Dominique Mosbergen, *Ahmed Mohamed Will Not Return to MacArthur High School, Family Says*, HUFFINGTON POST (Sept. 18, 2015, 1:37 AM), [http://www.huffingtonpost.com/entry/ahmed-mohamed-changing-schools\\_55fb8e18e4b00310edf691da](http://www.huffingtonpost.com/entry/ahmed-mohamed-changing-schools_55fb8e18e4b00310edf691da). While this incident occurred in Texas, a similar event could occur in Colorado with this new legislation. For analysis of negative effects of the law, see discussion *infra* Section III.A.–C.

how this law will actually harm students, and what alternatives provide better solutions.

### I. OVERVIEW OF THE SCHOOL SAFETY ACT

Two separate bills—Senate Bill 15-213 and Senate Bill 15-214—make up the tenants of the School Safety Act.<sup>8</sup> Senate Bill 15-213 creates a limited waiver of governmental immunity for school districts in cases of school violence.<sup>9</sup> Removing governmental immunity means students and families harmed from school violence can pursue legal remedies against the school district.<sup>10</sup> These legal remedies include the ability to bring a civil suit for damages and to obtain discovery pertaining to the violent act at the school.<sup>11</sup> Between now and 2017, students and families can file suits but can only receive discovery as compensation, not monetary damages.<sup>12</sup> After July 1, 2017, students and families can file suits and receive discovery and damages as compensation.<sup>13</sup> Discovery could include, for example, whether the school had notice that the student who caused the violent act was dangerous and whether the school failed to take precautions to prevent violence. Therefore, while Senate Bill 15-213 seems solely about governmental immunity and tort claims, it actually places an immense responsibility on schools to prevent these legal claims by stopping any incident that might lead to a claim.<sup>14</sup>

Preventing incidents is where Senate Bill 15-214 becomes important. Senate Bill 15-214 created a school safety and youth mental health committee to address how to prevent acts of school violence.<sup>15</sup> Specifically, the committee has the following responsibilities:

1. “Study issues relating to school safety and the prevention of threats to the safety of students, teachers, administrators, employees, and volunteers . . . ;”
2. “Study and evaluate programs and methods for identifying and monitoring students in crisis;”

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8. Senate Bill 15-213 and Senate Bill 15-214 were codified in title 24, section 10-106.3 and title 22, section 15-101(1)(a)(I)–(IV) of the Colorado Revised Statutes respectively. *See* COLO. REV. STAT. §§ 24-10-106.3, 22-15-101. While the Claire Davis School Safety Act officially relates to Senate Bill 15-213 at title 24, section 10-106.3 of the Colorado Revised Statutes, because the two bills are related, they will be referred to together as the School Safety Act for the remainder of this Comment.

9. COLO. REV. STAT. § 24-10-106.3(4).

10. *See id.* § 24-10-106.3(9).

11. *Id.*

12. *Id.* § 24-10-106.3(9)(b)(I). This means families could only obtain information about what the school knew about the student who committed the act, such as if they failed to take precautions after identifying a dangerous student.

13. *Id.* § 24-10-106.3(9). However, the damages are capped at \$350,000 per injured individual. *See id.* § 24-10-106.3(9)(a) (stating that the maximum amount of damages is governed by COLO. REV. STAT. § 24-10-114(1) (2016), which limits damages to \$350,000 for injury to one person in a single occurrence).

14. *See id.* § 24-10-106.3(3)–(4), (9).

15. *Id.* § 22-15-101(1)(a)(I)–(IV).

3. “Develop standardized criteria for school personnel to use in assessing the potential threat posed by one or more students; and . . .”

4. Make recommendations to the education committees of the general assembly.<sup>16</sup>

The purpose of these two bills is to enforce a stricter duty of reasonable care from schools to their students to prevent school violence and to keep students safe.<sup>17</sup> Senate Bill 15-213 creates the consequence for failing to do so,<sup>18</sup> and Senate Bill 15-214 creates a method to prevent that consequence.<sup>19</sup>

## II. BACKGROUND

This Part will provide background information on Colorado’s Governmental Immunity Act, mass shooting data in the United States, the history and structure of threat assessments, the Second Amendment and gun culture in the United States, and other countries’ approaches to preventing mass shootings. This information will provide a foundation for analyzing the ineffectiveness of the School Safety Act at preventing school violence, as well as provide a foundation for discussing alternatives to the School Safety Act.

### A. Colorado’s Governmental Immunity Act

Prior to the School Safety Act, students harmed in an incident of school violence could not sue their school district because of the Colorado Governmental Immunity Act,<sup>20</sup> which the Colorado Governmental Assembly originally adopted in 1971.<sup>21</sup> The Act created immunity for all tort actions against a public entity with six exceptions.<sup>22</sup> The six exceptions are as follows: (1) automobile accidents; (2) negligent operation of hospitals and jails; (3) dangerous conditions of public buildings; (4) negligent construction, operation, or maintenance of public roads; (5) dangerous conditions in public parks and recreational facilities; and (6) water, sewer, trash, and other proprietary activities.<sup>23</sup> Historically, courts have interpreted “dangerous conditions of public buildings” to apply only to injuries from dangerous physical conditions in buildings, not to dangerous activities in buildings.<sup>24</sup> Therefore, previously under the Colorado Governmental Immunity Act, someone could not sue a school dis-

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16. *Id.*

17. *Id.* § 24-10-106.3(3).

18. *See id.* § 24-10-106.3(3)–(4), (9).

19. *See id.* § 22-15-101(1)(a)(I)–(IV).

20. COLO. REV. STAT. § 24-10-106 (2016).

21. Anne Whalen Gill, *Interpreting the Colorado Governmental Immunity Act*, COLO. LAW., Feb. 1997, at 77, 80 n.6.

22. *Id.* at 77.

23. *Id.* These exceptions were adopted in title 24, section 10-106(1) of the Colorado Revised Statutes. *Id.*

24. *Id.* at 77–78.

trict (a public entity) for a tort claim arising from a dangerous activity (such as a violent student) because this would not fall under one of the six exceptions in the statute.<sup>25</sup> The School Safety Act amended the Colorado Governmental Immunity Act by providing a new statutory exception for dangerous activities that occur in schools that is not limited to physical conditions.<sup>26</sup>

### *B. Mass Shooting Data*

It is important to understand the history of mass shootings in the United States and the frequency of school shootings in order to provide context to the intention and the purpose of the School Safety Act. In 2014, the Federal Bureau of Investigation conducted a study of active shooter incidents that occurred from 2000 to 2013.<sup>27</sup> Of the 160 active shooter incidents, thirty-nine (24.4%) occurred at an educational institution: a pre-K to twelfth-grade school, a place of higher education, or a school related facility.<sup>28</sup> The second highest rate of shootings when broken up by location occurred at education institutes.<sup>29</sup> In the thirty-nine shootings that took place at education institutes, 117 people were killed and 120 were wounded.<sup>30</sup> The two highest death counts from the 160 active shooter incidents, which include incidents at education institutes and other locations, occurred at Virginia Tech University (thirty-two killed, seventeen wounded) and Sandy Hook Elementary School (twenty-six killed, two wounded).<sup>31</sup> Overall, the active shooter study found 1,043 people were killed or wounded in all of the active shooter incidents.<sup>32</sup>

Everytown for Gun Safety, a national coalition dedicated to ending gun violence, also reported on FBI research of mass shootings from January 2009 to July 2015.<sup>33</sup> Its research concluded that, during this seven year period, there were 133 mass shootings across thirty-nine states.<sup>34</sup> With less than one percent of gun homicides in 2012 occurring in incidents with four or more victims, only a small portion of gun violence overall involves mass shootings.<sup>35</sup> In addition, there was evidence in only

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25. *See id.*

26. *See* COLO. REV. STAT. § 24-10-106.3(4) (2016).

27. BLAIR & SCHWEIT, *supra* note 4, at 4–5. The study was conducted after President Obama signed The Investigative Assistance for Violent Crimes Act of 2012 into law, which aids the attorney general in investigating acts of public violence, including mass shootings. *Id.* at 4. The study sought to “provide further clarity” to the threats that result in incidents of public violence. *Id.*

28. *Id.* at 13.

29. *Id.* Shootings occurred at places of commerce at the highest rate, where seventy-three out of the 160 (45.6%) shootings occurred. *Id.*

30. *Id.* at 15.

31. *Id.*

32. *Id.* at 7.

33. EVERYTOWN FOR GUN SAFETY SUPPORT FUND, ANALYSIS OF RECENT MASS SHOOTINGS 1 (2015), <http://everytownresearch.org/documents/2015/09/analysis-mass-shootings.pdf>.

34. *Id.*

35. *Id.* at 2.

one of the 133 shootings of a serious mental health issue that would have prohibited the shooter from owning a gun.<sup>36</sup>

While this data and the number of mass shootings in the United States seems daunting, a school shooting in the larger context of gun deaths is a small and rare occurrence.<sup>37</sup> In fact, even after the Sandy Hook school shooting, Arne Duncan, the United States Secretary of Education at the time, wrote in response to the incident, “[s]chools are among the safest places for children and adolescents in our country, and, in fact, crime in schools has been trending downward for more than a decade.”<sup>38</sup> The National Center for Education Statistics’ most recent report, *Indicators of School Crime and Safety*, shows that out of the overall amount of youth homicides, less than two percent occurred in schools.<sup>39</sup> According to the Center’s most recent data, in the 2011–2012 school year there were 1,199 youth homicides, but only fifteen of those occurred in schools.<sup>40</sup> This suggests that youth are much more likely to be killed outside of school than within school.<sup>41</sup>

### C. The History and Foundation of Threat Assessments

The School Safety Act will create an assessment framework for schools to use to identify threatening students to intervene before students commit violent acts.<sup>42</sup> It is useful to understand the structure and history of a school threat assessment to better understand how schools will use them.

The most recent report by the United States Secret Service (the Secret Service) and the United States Department of Education (the Department of Education) studied forty-one school shooters between 1974 and 2000.<sup>43</sup> This report, known as the *Safe Schools Report*, found that students who commit a school shooting possess a wide range of characteristics and that “[t]here is no accurate or useful ‘profile’ of students who engaged in targeted school violence.”<sup>44</sup> Students involved in school

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36. *Id.* at 5.

37. Todd A. Demitchell, *Locked Down and Armed: Security Responses to Violence in Our Schools*, 13 CONN. PUB. INT. L.J. 275, 278 (2014).

38. Arne Duncan, *Resources for Schools to Prepare for and Recover from Crisis*, HOMEROOM: OFFICIAL BLOG U.S. DEP’T EDUC. (Dec. 17, 2012), <http://www.ed.gov/blog/2012/12/resources-for-schools-to-prepare-for-and-recover-from-crisis/>.

39. SIMONE ROBERS ET AL., NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC. & BUREAU OF JUSTICE STATISTICS, *INDICATORS OF SCHOOL CRIME AND SAFETY: 2014*, at 6 (2015), <http://nces.ed.gov/pubs2015/2015072.pdf>.

40. *Id.*

41. *See id.*

42. *See* COLO. REV. STAT. § 22-15-101(1)(a)(III) (2016).

43. BRYAN VOSSEKUIL ET AL., U.S. SECRET SERV. & U.S. DEP’T OF EDUC., *THE FINAL REPORT AND FINDINGS OF THE SAFE SCHOOL INITIATIVE: IMPLICATIONS FOR THE PREVENTION OF SCHOOL ATTACKS IN THE UNITED STATES* 8 (2004) [hereinafter *SAFE SCHOOLS REPORT*], <https://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf>.

44. *Id.* at 19.



shootings had a range of attributes: some had straight As, some were “bullies,” and some suffered from social issues.<sup>45</sup>

The *Safe Schools Report* is based on a study the Secret Service previously conducted called the *Exceptional Case Study Project* (ECSP).<sup>46</sup> The ECSP focused on behaviors of people who assassinated, attacked, or attempted to assassinate or attack public officials in the United States.<sup>47</sup> The ECSP led to the Secret Service’s more thorough and robust use of threat assessments to identify individuals who might harm public officials.<sup>48</sup> The success with these threat assessments led the Secret Service to extend this idea to students in schools.<sup>49</sup>

Following the *Safe Schools Report*, the Secret Service and the Department of Education created *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, based on the *Safe Schools Report*’s findings.<sup>50</sup> The guide states that threat assessments should not include assessment of characteristics but should focus on the facts for each individual case.<sup>51</sup> The guide also cautions that threat assessments should not be a tool to survey the entire student body, but instead should be a tool to identify additional information about a student after the student has exhibited some form of concerning behavior.<sup>52</sup>

Colorado developed the Colorado School Safety Resource Center’s *Essentials of School Threat Assessment* as a guide to implementing threat assessments in Colorado schools (the Colorado School Safety Handbook).<sup>53</sup> This handbook is based in part on the *Threat Assessment in Schools* guide.<sup>54</sup> Therefore, threat assessments used in Colorado will be based on similar studies and recommendations as threat assessments created by the Secret Service and the Department of Education.<sup>55</sup>

45. *Id.* at 19–20.

46. *Id.* at 4.

47. *Id.*

48. *Id.*

49. *Id.* at 5–6.

50. ROBERT A. FEIN ET AL., U.S. SECRET SERV. & U.S. DEP’T OF EDUC., THREAT ASSESSMENT IN SCHOOLS: A GUIDE TO MANAGING THREATENING SITUATIONS AND TO CREATING SAFE SCHOOL CLIMATES, at iii (2004), <https://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.

51. *Id.* at 32.

52. *Id.* at 45.

53. See COLO. SCH. SAFETY RES. CTR., DEP’T OF PUB. SAFETY, ESSENTIALS OF SCHOOL THREAT ASSESSMENT: PREVENTING TARGETED SCHOOL VIOLENCE (2015), <http://cdpsdocs.state.co.us/safeschools/CSSRC%20Documents/CSSRC%20Essentials%20of%20TA%20202014.pdf>.

54. *Id.* at 6 (citing FEIN ET AL., *supra* note 50, at 29) (discussing the “[s]ix principles” that “form the foundation of the threat assessment process”).

55. See *id.*

### D. The Second Amendment and Gun Culture

This Comment addresses gun legislation and gun control as alternatives to the School Safety Act, but to do so effectively, it is important to understand the constitutional protections related to guns in the United States as well as the culture and perceptions surrounding these protections. The Second Amendment of the United States Constitution states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>56</sup> The United States Supreme Court has interpreted the Second Amendment to include an individual right to own certain weapons.<sup>57</sup> This means that, unlike other countries that have dealt with gun violence by categorically banning weapons and guns, solutions must look different in the United States.<sup>58</sup>

In addition to constitutional protections, there is a strong cultural opposition to gun control in the United States.<sup>59</sup> Recently, more people are in favor of gun rights and more people believe owning guns is a safe solution to gun violence.<sup>60</sup> The Pew Research Center conducted studies that indicate a broad increase in support for gun rights and a decrease in support for gun control, including the belief that gun ownership makes people’s homes safer and that gun ownership protects people from crime.<sup>61</sup>

### E. Other Countries’ Solutions to Mass Shootings

Comparing the School Safety Act to other countries’ solutions to mass shootings helps to illustrate the ineffectiveness of the School Safety Act and to lay the foundation for discussing more successful alternatives. Other countries have successfully decreased mass shootings without laws like the School Safety Act.<sup>62</sup> Australia, the United Kingdom, Canada, and Japan all have lower gun violence rates than the United States.<sup>63</sup> Years ago, when thirty-two people were killed in a mass shooting in Australia at Port Author after a string of mass shootings from 1979 to

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56. U.S. CONST. amend. II.

57. *District of Columbia v. Heller*, 554 U.S. 570, 635–36 (2008) (holding that the District of Columbia’s ban on handguns in the home violated the Second Amendment).

58. *See id.*; *see also* U.S. CONST. amend. II.

59. Andrew Kohut, *Despite Lower Crime Rates, Support for Gun Rights Increases*, PEW RES. CTR. (Apr. 17, 2015), <http://www.pewresearch.org/fact-tank/2015/04/17/despite-lower-crime-rates-support-for-gun-rights-increases/>; *Growing Public Support for Gun Rights*, PEW RES. CTR. (Dec. 10, 2014), <http://www.people-press.org/2014/12/10/growing-public-support-for-gun-rights/>.

60. Kohut, *supra* note 59; *Growing Support for Gun Rights*, *supra* note 59.

61. Kohut, *supra* note 59; *Growing Support for Gun Rights*, *supra* note 59.

62. *See, e.g.*, Mark B. Melter, *The Kids Are Alright; It’s the Grown-Ups Who Scare Me: A Comparative Look at Mass Shootings in the United States and Australia*, 16 GONZ. J. INT’L L. 33, 44–45 (2012); *see also* Walter Hickey, *How Australia and Other Developed Nations Have Put a Stop to Gun Violence*, BUS. INSIDER (Jan. 15, 2013, 8:07 PM), <http://www.businessinsider.com/canada-australia-japan-britain-gun-control-2013-1>.

63. Hickey, *supra* note 62.

1996, the Australian government passed strict gun control reform.<sup>64</sup> These reforms banned assault style weapons and magazines, initiated a countrywide gun buyback program, and banned owning a gun without a legitimate reason for the weapon.<sup>65</sup> Since that incident, Australia has not had another mass shooting.<sup>66</sup>

In the United Kingdom, any person who owns a gun must first complete the process to obtain a certificate, and there are bans on many types of guns.<sup>67</sup> In Canada, there are also bans on many types of guns, and owners must complete a similar process to obtain a gun license.<sup>68</sup> In addition, license agents are required to notify the gun purchaser's spouse or next of kin that the person is purchasing a gun.<sup>69</sup> In Japan, only hunting rifles and shotguns are legal, and an owner must first pass a class with a written and practical exam and complete a mental health analysis.<sup>70</sup> While not all of these restrictions would be possible in the United States because of constitutional protections, these examples demonstrate that passing gun restriction legislation has an effect on preventing mass shootings.<sup>71</sup>

### III. ANALYSIS

Part III will explain the faults of the School Safety Act and recommend alternatives to keep students safe in schools that avoid these faults. First, this Part will discuss why the School Safety Act will be ineffective, focusing on the problems with using threat assessments to identify and prevent threats and on the lack of support the law has within the larger field of gun regulation legislation. Next, this Part will explain the most detrimental effects the School Safety Act will have—harming students through overly broad assessments, perpetuating racial bias, and strengthening the connection between the school system and the juvenile and criminal justice systems. Finally, this Part will discuss alternatives to the School Safety Act, including passing gun regulation legislation and strengthening school climate within schools, both of which can help create a safe environment for students without producing the negative effects of the School Safety Act.

#### *A. The School Safety Act Will Be Ineffective at Preventing School Shootings*

The School Safety Act will be ineffective because threat assessments will be unsuccessful at identifying threatening students and be-

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64. Melter, *supra* note 62, at 44–45.

65. *Id.* at 45, 49.

66. *Id.* at 45.

67. Hickey, *supra* note 62.

68. *Id.*

69. *Id.*

70. *Id.*

71. See Melter, *supra* note 62, at 44–46; see also Hickey, *supra* note 62.

cause the School Safety Act is unsupported by laws outside school walls to address mass shootings. Threat assessments are ineffective because it is difficult to identify students who pose a threat based on characteristics or behaviors, yet the nature of using threat assessments requires schools to do so.<sup>72</sup> In addition, a comparison of the School Safety Act to other countries' solutions to mass shootings suggests that larger efforts, such as restriction and regulation of guns, are necessary to have a substantial effect on preventing mass shootings.<sup>73</sup>

### 1. Threat Assessments Will Be Ineffective Because They Do Not Successfully Identify Students Who Pose a Potential Threat

The *Threat Assessment in Schools* guide recommends that threat assessments focus on individual facts and not be used as a tool to survey the entire student body.<sup>74</sup> This section will first explain why it is difficult to identify students who pose a potential threat by focusing on characteristics and behaviors. Next, it will explain why, despite the *Threat Assessment in Schools* guide's recommendations, threat assessments are unlikely to focus on the facts of each individual case and are unlikely to be used on individual students rather than the entire student body.

Many studies find that it is difficult to identify the specific characteristics and behaviors of school shooters before they commit the act.<sup>75</sup> While the general public might have a preconceived notion of who a school shooter is based on past incidents or bias (for example, an antisocial student with poor grades and few friends), the *Safe Schools Report* mentioned above illustrates this bias is not correct.<sup>76</sup> In fact, most of the shooters surveyed in the *Safe Schools Report* were performing well in school, and many were receiving grades of As and Bs at the time of the attack.<sup>77</sup> Some students in this group were enrolled in advanced courses or were on the honor roll.<sup>78</sup> At the same time, some of the shooters studied were receiving grades of Cs, and Ds, or were failing school.<sup>79</sup> While student shooters fall into these categories, students who do not pose any threat also fall into all of these categories, lessening the effectiveness of grades (or any one characteristic or behavior) in identifying threatening students.<sup>80</sup> In fact, for any conduct that seems to define a school shoot-

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72. See discussion *infra* Section III.A.1.

73. See discussion *infra* Section III.A.2.

74. FEIN ET AL., *supra* note 50, at 32, 45; see also discussion *supra* Section II.C.

75. See SAFE SCHOOLS REPORT, *supra* note 43, at 19; see also Malcolm Gladwell, *Thresholds of Violence: How School Shootings Catch On*, NEW YORKER, Oct. 19, 2015, at 30, 32–33, <http://www.newyorker.com/magazine/2015/10/19/thresholds-of-violence>; N. R. Kleinfield et al., *Mass Murderers Fit Profile, as Do Many Others Who Don't Kill*, N.Y. TIMES (Oct. 3, 2015), <http://www.nytimes.com/2015/10/04/us/mass-murderers-fit-profile-as-do-many-others-who-dont-kill.html>.

76. See SAFE SCHOOLS REPORT, *supra* note 43, at 19–20.

77. *Id.* at 20.

78. *Id.*

79. *Id.*

80. See Kleinfield et al., *supra* note 75.

er's behavior or personality, there are people who are not and will never be a dangerous threat but who will fall into the same categories.<sup>81</sup>

For example, in response to the school shooting at Umpqua Community College in Roseburg, Oregon, the *New York Times* published an article comparing various school shooters.<sup>82</sup> The analysis led the authors to remark that "[w]hat seems telling about the killers, however, is not how much they have in common but how much they look and seem like so many others who do not inflict harm."<sup>83</sup> While many of the shooters shared behaviors such as depression, loneliness, and general isolation from others, the article also notes these behaviors depict tens of thousands of Americans.<sup>84</sup> Criminologist James Alan Fox from Northwestern University, who has studied mass murderers, summarized this point saying, "[w]e can't round up all the people who scare us."<sup>85</sup>

In *Thresholds of Violence: How School Shootings Catch On*, an article published by the *New Yorker*, Malcolm Gladwell further elaborated on the idea that it is difficult to define and identify the characteristics or behaviors of a school shooter.<sup>86</sup> Gladwell applied the "Granovetterian model" to the phenomenon of school shooters to illustrate how those who commit the acts now no longer possess the same attributes thought to be associated with a psychopathic killer as the shooters before and up to the Columbine incident.<sup>87</sup> To illustrate this point, Gladwell profiled John LaDue, a young man who planned to shoot up and bomb his own high school.<sup>88</sup> LaDue, unlike many of the shooters before and up to Columbine, did not have a history of suspicious behavior, problems in school, a traumatic background, or mental health issues.<sup>89</sup> When given the standard psychological evaluation for a school shooter, LaDue did not demonstrate any sign of a threat.<sup>90</sup> Yet, LaDue had purchased guns and materials to create dangerous bombs and had created detailed plans specifying how he would carry out his attack.<sup>91</sup> The fact that LaDue did not possess any alarming attributes in everyday life or on a psychological

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81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. Gladwell, *supra* note 75, at 32–33.

87. *Id.* at 34–38. The Granovetterian model is the idea that when people join riots (or in the case of school shootings, revolutions, or phenomenon, as Gladwell explains them), the further removed the person is from the beginning of the incident, the less likely he or she will individually possess the same characteristics or motivations for joining. *Id.* at 34–35. Instead, the person's joining is a reaction to the people who joined before. *Id.* at 35.

88. *Id.* at 36–38.

89. *Id.* at 33, 36.

90. *Id.* at 36–37.

91. *Id.* at 30, 32.

evaluation further illustrates that the assumption that threat assessments can accurately identify people who pose a threat is misguided.<sup>92</sup>

The *Threat Assessment in Schools* guide's recommendations to avoid focusing on characteristics and to avoid surveying the entire student body likely stem from the above difficulties in using those tactics to identify threats. While the recommendations seem great on paper, it is difficult to understand how they would actually work in practice.

First, it is difficult to analyze facts without conflating them with characteristics. For example, the *Threat Assessment in Schools* guide explains that to focus on facts of an individual case, the analysis should be based on behaviors.<sup>93</sup> However, behaviors are very similar to characteristics because both can relate to how a person acts.<sup>94</sup> In addition, a focus on behavior over characteristics will not necessarily make identifying a suspect any easier because school shooters do not always exhibit the same behaviors,<sup>95</sup> and because people who do not pose a threat may exhibit the same behaviors as a school shooter.<sup>96</sup> Second, while threat assessments should not be a tool to survey the entire student body, the *Threat Assessment in Schools* guide states, "Any student with the motive, intent, and ability potentially is capable of mounting a targeted attack at school."<sup>97</sup> Starting with the assumption that anyone is capable seems to steer away from the recommendation that threat assessments not be used to survey all students.<sup>98</sup>

Colorado's approach to threat assessments does not resolve these concerns. The Colorado School Safety Handbook states, "An inquiry should be initiated immediately in any situation of concern."<sup>99</sup> The presumption to begin an inquiry at any hint of threat suggests that threat assessments are likely to be used overzealously, which will result in threat assessments used to survey the entire student body because officials will constantly be on the lookout for threats.<sup>100</sup> In addition, the handbook includes questions to identify students who are potential threats, such as questions about their behaviors in class, their interactions with peers, and whether they feel comfortable speaking with adults. These questions suggest that threat assessments are still likely to be used by

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92. See *id.* at 33, 36–37.

93. FEIN ET AL., *supra* note 50, at 32.

94. The definition of "behavior" according to the Merriam-Webster's Dictionary is, "[T]he manner of conducting oneself." *Behavior*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/behavior> (last visited Feb. 12, 2016). The definition of "characteristic" according to the Merriam-Webster's Dictionary is, "[A] distinguishing trait, quality, or property." *Characteristic*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/characteristic> (last visited Feb. 12, 2016).

95. See Gladwell, *supra* note 75, at 32–33.

96. See Kleinfeld et al., *supra* note 75.

97. FEIN ET AL., *supra* note 50, at 32.

98. See *id.*

99. COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 6.

100. See *id.*

focusing on characteristics and behaviors of students.<sup>101</sup> Therefore, the recommendations to focus on individual facts instead of the entire student body do not resolve the problems with threat assessments, and attempting to avoid these outcomes while still using threat assessments is not likely to be successful.<sup>102</sup>

In addition, the *Threat Assessment in Schools* guide is also problematic because the *Safe Schools Report* it stems from is based on a study the Secret Service previously conducted called the Exceptional Case Study Project, which focused on behaviors of adults who attacked or attempted to attack United States public officials.<sup>103</sup> A guide based on a study for adults used for students is problematic because there is extended research that youths' psychological development differs greatly from adults'.<sup>104</sup>

For example, young people "are more susceptible to influence, less future oriented, less risk averse, and less able to manage their impulses and behavior."<sup>105</sup> In addition, the area of the brain that controls rational and risk-averse decision-making is not fully developed until the early twenties.<sup>106</sup> From this, one can infer not only that youth cannot be assessed in the same way and will not respond in the same way to an assessment as adults, but that the reasoning behind an attack is likely different for an adolescent than for an adult.<sup>107</sup> Because the brain development, psychology, and decision-making of the two greatly differ, the connection between adult attackers and students is too tenuous to conclude that a threat assessment designed for students will work in the same way as a threat assessment designed for adult terrorists.<sup>108</sup>

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101. See *id.* at 10, 12.

102. See FEIN ET AL., *supra* note 50, at 32, 45; see also COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 10, 12 (illustrating the shortfalls described above).

103. SAFE SCHOOLS REPORT, *supra* note 43, at 4; see also discussion *supra* Section II.C.

104. See, e.g., BRITTANY KINTIGH, MICH. COUNCIL ON CRIME & DELINQUENCY, ADOLESCENT DEVELOPMENT: JUVENILES ARE DIFFERENT THAN ADULTS 1 (2012), <http://www.miccd.org/wp-content/uploads/2013/09/Youth-Dev-Issue-Brief.pdf>; NAT'L INST. OF MENTAL HEALTH, U.S. DEP'T OF HEALTH & HUMAN SERVS., THE TEEN BRAIN: STILL UNDER CONSTRUCTION (2011), [http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/teen-brain\\_141903.pdf](http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/teen-brain_141903.pdf); *Teen Brain: Behavior, Problem Solving, and Decision Making*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (Dec. 2011), [https://www.aacap.org/AACAP/Families\\_and\\_Youth/Facts\\_for\\_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx](https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx).

105. KINTIGH, *supra* note 104, at 2 (quoting Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1013 (2003)).

106. *Id.*

107. See *id.*

108. See *id.* at 2–6.

2. The School Safety Act Will Be Ineffective Because it is Unsupported by Other Laws That Have a Greater Effect on School Shootings and Gun Violence, as Demonstrated by a Comparison to Other Countries Whose Laws Have Been Effective in Preventing These Incidents

In addition to the difficulties of threat assessments, the School Safety Act will be ineffective because the law lacks support in the larger field of gun regulation legislation. A comparison to laws in other countries that have lower incidents of mass shootings demonstrates why a law like the School Safety Act will be ineffective at preventing mass shootings without support from gun regulation legislation.

Laws like the School Safety Act as a response to mass shootings are unique to the United States.<sup>109</sup> Other countries addressing mass shootings focus on gun regulation and reducing the number of guns rather than on identifying students who might be threatening.<sup>110</sup> The common justification for these types of solutions to gun violence, as opposed to legislation at a larger level, is that gun violence and products of it, such as school shootings, are largely a mental health issue rather than a gun regulation issue.<sup>111</sup> The School Safety Act corroborates this idea by placing the responsibility on schools to prevent violence by focusing on characteristics and behaviors of students through threat assessments.<sup>112</sup> This presupposes that mitigating the problem through other means is too difficult or will be ineffective. Other countries, however, have proved that is incorrect.<sup>113</sup>

For example, while the United Kingdom, Canada, Japan, and Australia all have lower gun violence rates than the United States, none of these countries focus their efforts on threat assessments in schools to prevent mass shootings.<sup>114</sup> Instead, these countries have stricter gun regulation laws and lower numbers of guns per person.<sup>115</sup> Each country bans certain weapons and requires a certification or application process before obtaining a gun.<sup>116</sup> The fact that there are lower instances of mass shootings and lower gun deaths per year indicates that, in those countries, regulation of the weapon leads to lower instances of gun violence.<sup>117</sup> Look-

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109. See Sarah Boseley, *High Gun Ownership Makes Countries Less Safe, US Study Finds*, GUARDIAN (Sept. 18, 2013, 9:06 AM), <http://www.theguardian.com/world/2013/sep/18/gun-ownership-gun-deaths-study>; see also Hickey, *supra* note 62 (discussing laws from other countries which do not include anything similar to the School Safety Act).

110. See Boseley, *supra* note 109; see also Hickey, *supra* note 62.

111. Hickey, *supra* note 62 (alluding to the common justification by stating other countries have similar mental health problems but do not have the same rates of gun violence).

112. See COLO. REV. STAT. § 22-15-101(1)(a)(I)–(IV) (2016).

113. See Hickey, *supra* note 62; see also discussion *supra* Section II.E.

114. See Hickey, *supra* note 62 (explaining the United Kingdom, Canada, Japan, and Australia's gun restriction laws, none of which include threat assessments in schools as a solution to mass violence or public shootings).

115. *Id.*

116. *Id.*; see also discussion *supra* Section II.E.

117. See Hickey, *supra* note 62.



ing at Australia as an example is most interesting because Australia suffered from a series of mass shootings and public violence similar to the United States and was able to prevent similar incidents from happening in the future once it passed stricter gun regulation laws.<sup>118</sup>

While there may be other reasons why gun violence rates in the United States differ from other countries, the United States cannot simply point to its citizens' mental health issues when there is a clear difference between gun laws in the United States and in countries with lower rates of gun violence.<sup>119</sup> In *How Australia and Other Developed Nations Have Put a Stop to Gun Violence*, Walter Hickey pointedly states, "Other countries all over the world play the same video games and have the same mental health problems as the United States, but manage to avoid a sky-high gun murder rate and frequent public shooting massacres," suggesting the laws that regulate guns and gun ownership in other countries play a larger role in reducing gun violence than focusing on mental health.<sup>120</sup>

Despite the documented success other countries have found through gun regulation, Colorado has failed to pass similar legislation that would have a positive effect on preventing mass shootings.<sup>121</sup> This calls into question whether the School Safety Act can be successful at preventing gun violence and mass shootings in schools when other countries' success relates to legislation the United States and Colorado do not have.<sup>122</sup>

For example, the National Rifle Association's state profile illustrates that citizens of Colorado do not need a permit to purchase most guns and do not need to register most guns.<sup>123</sup> This is in contrast with the laws from Australia, the United Kingdom, Canada, and Japan, which all require some sort of certificate, application, or protocol before obtaining a gun.<sup>124</sup> This lack of restrictions impinges on Colorado's ability to reduce mass shootings, even with laws like the School Safety Act, as demonstrated by the research that shows stricter gun regulations correlate with lower gun violence, while looser gun regulations correlate with higher gun violence.<sup>125</sup> Meaningful gun legislation has failed to pass at the federal level as well.<sup>126</sup> For example, Congress introduced the Fix

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118. See Melter, *supra* note 62, at 44–45; see also discussion *supra* Section II.E.

119. Hickey, *supra* note 62.

120. *Id.*

121. See *Colorado State Profile*, NAT'L RIFLE ASS'N AM., INST. FOR LEGIS. ACTION (Nov. 7, 2014), <https://www.nraila.org/gun-laws/state-gun-laws/colorado/>.

122. Compare Hickey, *supra* note 62 (explaining restrictions on gun ownership in the United Kingdom, Canada, Japan, and Australia), with *Colorado State Profile*, *supra* note 121 (explaining restrictions on gun ownership in Colorado).

123. *Colorado State Profile*, *supra* note 121.

124. See Hickey, *supra* note 62.

125. See *id.*

126. See Fix Gun Checks Act of 2013, S. 374, 113th Cong. (2013); see also *Text of the Fix Gun Checks Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s374/text#> (last updated Mar. 12, 2013).

Gun Checks Act in 2013, which was designed to strengthen background checks, but it died in committee without even reaching a vote.<sup>127</sup>

Comparing the United States' efforts to reduce gun violence and school shootings with other countries' efforts that have been successful in lowering gun deaths per year illustrates why the problem cannot be fully addressed without regulating the weapon itself. The failure to pass legislation that would likely have a more targeted effect on reducing school shootings suggests that the School Safety Act is an outlier that will struggle to be effective without support from other legislation working collectively to accomplish the goal of reducing school shootings.

### *B. The School Safety Act Will Be Harmful to Students*

Not only will the School Safety Act be ineffective, but it will actually be harmful to many students by (1) targeting students who are not a threat to their schools or communities through overly broad assessments; (2) perpetuating the racial bias in schools; and (3) strengthening the already dangerous pipeline between schools and the juvenile and criminal justice systems.

#### **1. Threat Assessments Will Target Students Who Are Not Actually a Threat Through Overly Broad Assessments**

The *Threat Assessment in Schools* guide explains that threat assessments should be based on facts and should not be used to survey all students.<sup>128</sup> However, as noted above, actually performing threat assessments in such a way will be unsuccessful.<sup>129</sup> Therefore, because threat assessments are still likely to be used on the entire student body and likely to focus on characteristics and behaviors, threat assessments will be particularly harmful to those students who may possess behaviors that could be perceived as "threatening" but are not in fact threats, such as students suffering from mental illness and students with disabilities.

The Colorado School Safety Handbook suggests the following questions to identify what threat a student poses: "Is the student experiencing hopelessness, desperation or despair?"; "Does the student have a trusting relationship with at least one responsible adult?"; "Has the student come to attention for any behavior of concern? If so, what? (Email, texting, website, posters, papers, class assignments, rule-breaking, violence, harassment, adjustment problems, depression or despair, acting-out behavior, etc.)"; and "Has the student experienced serious difficulties or been in distress?"<sup>130</sup> These questions are overly broad and could include nonthreatening students, such as students with mental illness.

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127. See S. 374.

128. FEIN ET AL., *supra* note 50, at 32, 45; see also discussion *supra* Section II.C.

129. See discussion *supra* Section III.A.1.

130. COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 10, 12.

For example, on September 22, 2015, students from local high schools in Colorado came to speak to the School Safety and Youth Mental Health Legislative Committee about youth mental health.<sup>131</sup> All six of the students present shared that they had either felt depression or some other form of mental illness or knew friends who had.<sup>132</sup> These students described attributes of high school students struggling with mental health issues, which included feeling depressed, antisocial, and unable to confide in a trusted adult about their problems.<sup>133</sup>

In addition to these students' own personal stories, statistics on depression suggest between ten and fifteen percent of teens suffer from depression at any one time.<sup>134</sup> In 2011, "a nationwide survey of college students . . . found that . . . [thirty] percent of students reported feeling . . . depressed at some time."<sup>135</sup> This demonstrates that a mental health issue such as depression is common among young people.<sup>136</sup> However, because of the limited number of students who actually commit an act of school violence, it also demonstrates that the majority of students suffering from a mental health issue are not a threat.<sup>137</sup> Yet, many of the behaviors of students suffering from mental illness—such as feelings of depression and hopelessness, inability to confide in an adult, experiencing serious difficulties, or acting out in class—could be used to identify potential threats.<sup>138</sup>

Students with disabilities are another group of students that could possess some of the behaviors on a threat assessment without actually being a threat. Concerning questions from the Colorado School Safety Handbook that relate to these behaviors include the following: "Has the student come to attention for any behavior of concern? If so, what? (Email, texting, website, posters, papers, class assignments, rule-breaking, violence, harassment, adjustment problems, depression or despair, acting-out behavior, etc.)"; "Has the student been a victim and/or initiator of hostile, harassing or bullying behavior directed toward other students, teachers, or other staff?"; "Does the student see violence as an

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131. I attended this meeting on Sept. 22, 2015, at the Colorado State Capitol in room 271, from 9:00 AM to 11:00 AM. This committee was created by the School Safety Act, and it was responsible for studying issues related to youth mental health and school safety and developing assessments and protocols to assess students and identify threats. *School Safety and Youth in Crisis Interim Committee: Meeting on S.B. 15-214*, 2015 Leg., 70th Gen. Assemb. (Colo. 2015) (statements of Reps., Colo. Youth Advisory Council & Colie's Closet).

132. *Id.*

133. *Id.*

134. Therese J. Borchard, *Why Are So Many Teens Depressed?*, PSYCHCENTRAL (Mar. 4, 2010), <http://psychcentral.com/blog/archives/2010/03/04/why-are-so-many-teens-depressed/>.

135. NAT'L INST. OF MENTAL HEALTH, U.S. DEP'T OF HEALTH & HUMAN SERVS., DEPRESSION AND COLLEGE STUDENTS 2 (2012), <https://infocenter.nimh.nih.gov/pubstatic/NIH%2012-4266/NIH%2012-4266.pdf>.

136. *See id.*

137. For information on the infrequency of school shootings, see discussion *supra* Section II.B.

138. COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 10, 12.

acceptable or desirable way to solve problems?"; and "Is the student's conversation and 'story' consistent with their actions?"<sup>139</sup>

Students with disabilities can have a range of mental, physical, or developmental disabilities, but many forms of educational disabilities manifest behaviors associated with the threat assessment such as Attention Deficit Hyperactivity Disorder, which might cause one to act out in class,<sup>140</sup> to Social Anxiety, which might make a student more prone to violent outbreaks.<sup>141</sup> Nationwide, there are an estimated 5.7 million students who are considered special education students because of some sort of disability.<sup>142</sup> However, again, the infrequency of violent school incidents such as school shootings suggests there are many students with disabilities who might exhibit potentially threatening behavior according to the Colorado School Safety Handbook who are not actually a threat.<sup>143</sup>

## 2. Threat Assessments Will Exacerbate the Racial Bias Already Present in Schools

Racial bias has historically existed in Colorado schools.<sup>144</sup> One example that demonstrates racial bias in schools is discipline assessments and protocols, which have a disproportionately negative impact on students of color.<sup>145</sup> Looking at discipline assessments in schools illustrates the inherent racial bias that still exists, which should caution schools, administrators, and lawmakers against using other assessments that could have a disproportionate effect on students of color, such as threat assessments.<sup>146</sup>

A study done by Padres & Jóvenes Unidos (Padres), a leading organization on school discipline issues, found that, in the 2003–2004 school year, "black students . . . were over five times more likely to be expelled, and over twice as likely to be referred to law enforcement" when compared to white students, and "Latino students were . . . almost three times as likely to be expelled and referred to law enforcement

139. *Id.*

140. See Caroline Miller, *What's ADHD (and What's Not) in the Classroom*, CHILD MIND INST. (Mar. 10, 2015), <http://www.childmind.org/en/posts/articles/2015-3-10-adhd-classroom-guide-teachers-parents>.

141. See Caroline Miller, *How Anxiety Leads to Disruptive Behavior*, CHILD MIND INST. (Mar. 26, 2013), <http://www.childmind.org/en/posts/articles/2013-3-26-anxiety-and-disruptive-behavior>.

142. CANDACE CORTIELLA & SHELDON H. HOROWITZ, *THE STATE OF LEARNING DISABILITIES: FACTS, TRENDS, AND EMERGING ISSUES* 12 (3d ed. 2014), <https://www.ncld.org/wp-content/uploads/2014/11/2014-State-of-LD.pdf>.

143. For discussion on infrequency of school shootings, see discussion *supra* Section II.B.

144. See PADRES & JÓVENES UNIDOS & ADVANCEMENT PROJECT, *LESSONS IN RACIAL JUSTICE AND MOVEMENT BUILDING: DISMANTLING THE SCHOOL-TO-PRISON PIPELINE IN COLORADO AND NATIONALLY* 6 (2014) [hereinafter *LESSONS IN RACIAL JUSTICE*], <http://www.padresunidos.org/sites/pju/files/media-root/Lessons%20in%20Racial%20Justice%20and%20Movement%20Building-Dismantling%20the%20.pdf>.

145. *Id.*

146. See *id.*

[when] compared to [w]hite students.”<sup>147</sup> Padres explains that one of the reasons for these disproportionate results is the conscious and unconscious idea that students of color are “[m]ore threatening and prone to violence” and “[l]acking self-discipline.”<sup>148</sup>

Padres’s study, which is aligned with numerous other studies, illustrates how racial bias in school discipline goes beyond how schools treat students of color but is a part of “a powerful manifestation of an entire system of oppressive and regressive cultural, political, and social forces.”<sup>149</sup> This means racial bias in schools stems from various other racially biased policies throughout history such as the “Tough on Crime” era, the elimination and stigma of social welfare programs, the animosity toward immigrants, and more.<sup>150</sup> Because racial bias is a systemic problem, it is more deeply ingrained in society and, therefore, will be more difficult to eradicate and will require more than just an understanding that it occurs.<sup>151</sup> Inherent, systemic racial bias is problematic for implementing threat assessments because threat assessments focus on whether students exhibit behaviors associated with bullying, violence, or acting out in class.<sup>152</sup> Bias toward which students exhibit those behaviors could result in a disproportionate number of students identified as threats, just as bias results in a disproportionate number of students identified with discipline issues.<sup>153</sup>

In response to efforts to address racial bias in school discipline, Colorado’s use of out of school suspensions, expulsions, and referrals to law enforcement are dropping in percentages, yet are still dropping faster for white students than students of color.<sup>154</sup> Though racial bias has decreased within school discipline, bringing in a threat assessment will exacerbate racial bias in schools because it will target behaviors that are commonly thought to be associated with students of color, such as violence and lack of discipline.<sup>155</sup> We need not look further to find evidence of this than the story of Ahmed Mohamed, mentioned at the beginning of

147. *Id.*

148. *Id.* at 7.

149. *Id.* at 10; see also Anne Gregory, Russell J. Skiba & Pedro A. Noguera, *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RESEARCHER 59, 62–63 (2010) (discussing that minority students were more likely to be “differentially selected for discipline consequences”); THOMAS RUDD, KIRWAN INST. FOR THE STUDY OF RACE & ETHNICITY, THE OHIO STATE UNIV., RACIAL DISPROPORTIONALITY IN SCHOOL DISCIPLINE 2–3 (2014), <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/02/racial-disproportionality-schools-02.pdf> (discussing that teachers are implicitly biased towards African Americans in the classroom and this results in “racial disproportionality in school discipline”).

150. LESSONS IN RACIAL JUSTICE, *supra* note 144, at 9–10.

151. *See id.*

152. *See* COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 10, 12.

153. *See* LESSONS IN RACIAL JUSTICE, *supra* note 144, at 6.

154. PADRES & JÓVENES UNIDOS, COLORADO SCHOOL DISCIPLINE REPORT CARD 5–6 (2015), [http://www.padresunidos.org/files/media-root/ES2JT/PJU-01\\_Report2015\\_web%20v2%204\\_6\\_15.pdf](http://www.padresunidos.org/files/media-root/ES2JT/PJU-01_Report2015_web%20v2%204_6_15.pdf).

155. *Id.* at 6; see also COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 10, 12 (instructing teachers to evaluate the behavior of students).

this Comment.<sup>156</sup> After Mohamed's incident, sources suggested that school officials were likely motivated by racial bias in their treatment and inquiry of Mohamed's behavior.<sup>157</sup>

### 3. Threat Assessments Will Exacerbate the School-to-Prison Pipeline by Strengthening the Connection Between Schools and the Juvenile and Criminal Justice Systems

The School Safety Act will exacerbate the school-to-prison pipeline, a phenomenon that involves overzealous disciplinary practices, including out-of-school suspensions, expulsions, tickets, and arrests.<sup>158</sup> This is because the School Safety Act will inevitably involve more law enforcement in students' lives and more strongly connect schools to the juvenile and criminal justice systems.<sup>159</sup>

The school-to-prison pipeline happens when schools use discipline tactics such as suspensions, expulsions, tickets, and arrests, all of which lead students out of schools, into the streets, and into the juvenile and criminal justice systems.<sup>160</sup> This is a pipeline effect because high numbers of out of school suspensions and expulsions correlate with high numbers of student referrals to law enforcement.<sup>161</sup> In addition, students who have been suspended or expelled are more likely to drop out and never graduate from high school.<sup>162</sup> Students who drop out or never graduate from high school are more likely to end up in the juvenile justice system, and many students who drop out or never graduate from high school end up in the adult criminal justice system.<sup>163</sup> In addition, because students of color are more likely to receive harsher punishment in school, including tickets, suspensions, and expulsions, the school-to-prison pipeline disproportionately affects students of color.<sup>164</sup>

156. See James Edwards, *Ahmed Mohamed and the Lingering Effects of Racial Profiling*, PRI (Sept. 18, 2015, 9:30 AM), <http://www.pri.org/stories/2015-09-18/ahmed-mohamed-and-lingering-effects-racial-profiling>; see also Dexter Thomas, *#IStandWithAhmed Lesson: Curiosity Is for White Kids*, L.A. TIMES (Sept. 16, 2015, 8:01 PM), <http://www.latimes.com/local/education/community/la-ahmed-mohamed-racism-20150916-htmlstory.html>.

157. See Edwards, *supra* note 156; see also Thomas, *supra* note 156.

158. See LESSONS IN RACIAL JUSTICE, *supra* note 144, at 6–7.

159. See COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 6 (urging school officials to contact police force at any time); see also ADVANCEMENT PROJECT ET AL., POLICE IN SCHOOLS ARE NOT THE ANSWER TO THE NEWTOWN SHOOTING 5 (2013), <http://www.advancementproject.org/resources/entry/police-in-schools-are-not-the-answer-to-the-newtown-shooting> (explaining how police are overzealous with their practices in schools).

160. LESSONS IN RACIAL JUSTICE, *supra* note 144, at 6–7.

161. *Id.* at 6 (reflecting the amount of out of school suspensions, expulsions, and referrals to law enforcement through chart).

162. See Robert Balfanz et al., *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, 5 J. APPLIED RES. ON CHILD. 1, 1 (2014).

163. TASK FORCE TO STUDY HIGH SCH. DROPOUT RATES OF PERSS. IN THE CRIMINAL JUSTICE SYS., MD. GEN. ASSEMBLY, SCHOOL DROPOUTS AND THEIR IMPACT ON THE CRIMINAL JUSTICE SYSTEM 1 (2012), [http://dlslibrary.state.md.us/publications/Exec/GOCCP/SB755Ch286\\_2011.pdf](http://dlslibrary.state.md.us/publications/Exec/GOCCP/SB755Ch286_2011.pdf).

164. See LESSONS IN RACIAL JUSTICE, *supra* note 144, at 6–7; see also discussion *supra* Section III.B.2.

This phenomenon is likely to be exacerbated with the use of threat assessments because they include communication and close relationships between schools and law enforcement.<sup>165</sup> For example, the Colorado School Safety Handbook states, “If at any time information suggests the need for law enforcement assistance, that assistance should be requested immediately.”<sup>166</sup> In addition to the handbook, which encourages law enforcement involvement, law enforcement is also likely to be overzealously used in threat assessments because historically, law enforcement is involved in Colorado schools even when students have not actually committed a serious offense.<sup>167</sup> For example, “between 2007 and 2012, the majority of referrals to law enforcement [in Denver] were for detrimental behavior, drug violations, ‘other’ violations of Code of Conduct, and disobedience/defiance – not for serious weapons or other school safety concerns.”<sup>168</sup>

While there may be incidents where law enforcement presence is necessary, as the study above demonstrates, many times law enforcement is notified when they do not need to be, which means students are receiving tickets and being arrested when they do not need to be.<sup>169</sup> Therefore, there is a large risk that the School Safety Act, which will require more communication between schools and law enforcement, will result in a strengthening of the school-to-prison pipeline because school officials are encouraged to notify law enforcement at any time, and law enforcement is already notified too frequently for frivolous, subjective, and superficial situations.<sup>170</sup> While the connection between a threat assessment and youth incarceration might at first seem tenuous, research demonstrates there is a long-standing correlation between overzealous discipline policies and youth incarceration, and this connection has serious repercussions for youth and communities.<sup>171</sup>

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165. See COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 6.

166. *Id.*

167. See ADVANCEMENT PROJECT ET AL., *supra* note 159, at 5.

168. *Id.*

169. *See id.*

170. *See id.*; see also COLO. SCH. SAFETY RES. CTR., *supra* note 53, at 6.

171. See BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 4–9, 12–14 (2006), [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf). In addition to students ending up in the school-to-prison pipeline, actual time in detention as a juvenile is problematic on its own because of the dangerous effects of juvenile detention. *Id.* For example, detention can actually increase recidivism for a juvenile rather than reduce it. *Id.* at 4–6. In fact, detention is the highest predictor of recidivism, greater than being a gang member, carrying a weapon, or having a poor relationship with one’s parents. *Id.* In addition, research finds that at least one third of detention centers are overcrowded, which has a negative impact particularly on youth with mental illness, and detaining youth does not actually reduce crime in the community as it is meant to. *Id.* at 8. Juvenile detention also has a negative impact on the youth’s ability to return to school and to gain employment. *Id.* at 9–10.

### *C. Alternatives to the School Safety Act*

It is possible to have safe schools without increased use of threat assessments and law enforcement involvement. While the motivation to implement legislation that attempts to reduce school violence is understandable, for all of the reasons stated above, the School Safety Act will be ineffective and is likely to do more harm than good. In light of this, the following are some recommendations for alternatives: (1) addressing the root of the problem by passing gun regulation legislation that focuses on restricting access to guns, and (2) implementing research and evidence-based practices to improve school climate.

#### 1. Gun Regulation Legislation

It is unfair and unusual to ask and expect schools to take on the entire responsibility of safety when the problem extends beyond school walls.<sup>172</sup> To make the greatest impact on preventing mass shootings, whether in schools or out of schools, legislatures need to reform gun regulation laws to make access to guns more difficult, which will in turn reduce the number of guns in the United States.<sup>173</sup> While the most effective way to do this might be to institute countrywide bans or to criminalize the ownership of guns, the constitutional right to bear arms—and the societal norms that follow from it—would prevent these restrictions.<sup>174</sup> Therefore, the remainder of this Comment will focus on solutions that would not unduly burden the Second Amendment. Part a will discuss a universal background check procedure so all gun purchasers obtain a background check, and Part b will discuss a more rigorous and thorough background check procedure.<sup>175</sup> With these outside supports in place, schools can more effectively focus on keeping their students safe knowing those outside school walls are also doing their part in this important job.

##### a. Universal Background Checks

The National Instant Criminal Background Check System (NICBC System) is the federal background check system currently in place, created by the Brady Act, and supported by many politicians, including President Obama.<sup>176</sup> The NICBC System prohibits those with a felony or do-

172. See discussion *supra* Section III.A.2.

173. See discussion *infra* Section III.C.1.

174. For a discussion on gun control and gun culture in the United States, see *supra* Section II.D.

175. These restrictions have been suggested and considered by the President and by Congress, suggesting they are not unduly burdensome to the Second Amendment. WHITE HOUSE, NOW IS THE TIME: THE PRESIDENT'S PLAN TO PROTECT OUR CHILDREN AND OUR COMMUNITIES BY REDUCING GUN VIOLENCE 3 (2013), [https://www.whitehouse.gov/sites/default/files/docs/wh\\_now\\_is\\_the\\_time\\_full.pdf](https://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf); see, e.g., Fix Gun Checks Act of 2013, S. 374, 113th Cong. (2013).

176. See WHITE HOUSE, *supra* note 175, at 3. The Brady Act was passed on November 30, 1993, and created a five-day waiting period before a person could officially purchase a gun in states



mestic violence conviction from obtaining a gun, and it has prevented 1.5 million people from purchasing guns.<sup>177</sup> However, there are many ways to buy a gun without undergoing this background check.<sup>178</sup>

For example, many people purchase guns at a pawnshop or other re-sell location where background checks generally do not occur, and many private retail sellers are exempt from running a background check.<sup>179</sup> In addition, only sellers who are “engaged in the business of selling guns” are required to obtain a federal license, which in turn requires them to administer background checks on their purchases.<sup>180</sup> However, many sellers circumvent this requirement because they do not fall under the strict definition of selling guns “regularly.”<sup>181</sup> This allows shops that only occasionally sell guns, or sell guns not as their primary purpose, to skirt the federal license requirement, enabling them to sell guns without conducting background checks.<sup>182</sup> The first step in tightening regulations is to ensure background checks do occur at these locations for all gun sales. One way to do this is to broaden the definition of “engaged in business” to ensure that even those who sell guns occasionally must obtain a federal license and conduct background checks.<sup>183</sup> While buyers could still avoid a background check when a gun is sold or transferred among family members, close friends, or within another unregulated purchase, ensuring that established sellers use background checks will tighten the security around gun purchases.<sup>184</sup>

#### b. More Rigorous and Thorough Background Checks

While more strictly implementing a universal background check would help tighten regulations in gun purchases, there are some problems with relying on the current background check procedures alone. Requiring background checks under the current procedures will not prevent all people who pose a threat from obtaining a gun.<sup>185</sup> Many of the shooters in recent mass shootings obtained their guns legally and passed a federal background check, including the Umpqua Community College

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that did not have an acceptable alternative background check system. *Brady Law*, ATF, <https://www.atf.gov/rules-and-regulations/brady-law> (last updated July 29, 2015). Therefore, this measure incentivized states to create background check systems. *Id.*

177. WHITE HOUSE, *supra* note 175, at 3.

178. *Id.*; see also Larry Buchanan et al., *How They Got Their Guns*, N.Y. TIMES, <http://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html> (last updated Dec. 3, 2015) (“The vast majority of guns used in 15 recent mass shootings . . . were bought legally and with a federal background check.”).

179. WHITE HOUSE, *supra* note 175, at 3.

180. EVERYTOWN FOR GUN SAFETY, BEYOND GRIDLOCK: HOW WHITE HOUSE ACTION ON GUN VIOLENCE CAN SAVE LIVES 2, 4 (2015), <http://everytownresearch.org/documents/2015/10/beyond-gridlock-white-house-action-gun-violence-can-save-lives.pdf>.

181. *Id.* at 4.

182. *Id.*

183. *Id.*

184. See *id.*

185. See Buchanan et al., *supra* note 178.

shooter in Oregon, the news station shooter in Virginia, the Sikh temple shooter in Wisconsin, and the movie theater shooter in Colorado.<sup>186</sup>

At the time James Holmes, the man who attacked the audience at a movie theater in Aurora, Colorado, in July of 2012, purchased four guns at a store, he had already purchased rounds of ammunition for different types of weapons on the Internet, and he was currently seeing a psychiatrist for mental health issues.<sup>187</sup> Yet he was able to purchase the additional guns at a store without any problems.<sup>188</sup> Under the current background check system, even a serious mental health issue would not have prevented him from purchasing these materials.<sup>189</sup>

To prevent people who pose a threat from obtaining guns, background checks need to include more than simply running someone's name through a list. They need to make sure the person is not purchasing the gun for the purpose of an attack and make sure the person is able to safely own a gun.<sup>190</sup> This should be a longer, more intensive process to ensure that past suspicious behavior, such as recent purchase of guns, ammunition, or other weapons, is identified and assessed prior to purchasing a gun.<sup>191</sup> While mental health may also be a relevant factor, as demonstrated above, it is difficult to identify a person who poses a threat based solely on behaviors associated with mental health issues.<sup>192</sup> The fact that mass shooters in the past have been able to pass a background check and purchase a gun even with mental health issues corroborates this.<sup>193</sup> It is possible, however, to identify the number and types of guns a person already owns and the time that person purchased those guns.

While it may seem ironic to suggest stronger assessment for gun purchasers while advocating against it for students, more strictly assessing potential gun purchasers is different from conducting threat assessments on students for many reasons. First, there is a greater risk of danger for gun purchasers than for students at school because, as research demonstrates, school shootings are a small and rare occurrence in the context of larger gun violence.<sup>194</sup> In addition, gun purchasers seek out a gun, and in doing so, understand that some restrictions come with this purchase. It is similar to the understanding that someone will assess us

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186. *Id.* In Oregon, a man killed six people at a college he attended. *Id.* In Virginia, a man shot and killed a television reporter and a cameraman while they reported on live television. *Id.* In Wisconsin, a man shot and killed six people at a Sikh temple during a Sunday service. *Id.* In Colorado, a man shot and killed twelve people and wounded seventy at a movie theater. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *See id.*

191. *See id.* (discussing specifically how James Holmes's past suspicious behavior of purchasing guns and ammunition online did not prevent him from purchasing more in person).

192. *See* discussion *supra* Section III.A.1.

193. Buchanan et al., *supra* note 178.

194. *See* Demitchell, *supra* note 37, at 278–79; *see also* ROBERS ET AL., *supra* note 39, at 6.

when we obtain a driver's license or a license to practice a particular profession. There is an understood pattern of assessments when people take on a responsibility, such as owning a gun or driving a car, that is not present when a student attends school.

In addition, focusing on prior purchases of a gun owner can accurately determine information that is relevant to an attack, unlike assessing personality or even mental health.<sup>195</sup> If a background check system required the logging of all purchases, sellers would be able to tell which guns people owned and when they purchased them. While this would not in itself prevent people who pose a threat from obtaining guns, it could make it more difficult if certain limits were imposed, such as a maximum number of weapons a person could purchase at one time, a time period between purchases, or a waiting period before each purchase. We could also learn from other countries' efforts by implementing similar tactics, such as more rigorous application or certification processes.<sup>196</sup>

It is impossible to meaningfully consider these reforms without addressing the difficulties the gun lobby in the United States poses. The National Rifle Association (NRA) contributed over twenty million dollars to political campaigns from 1990 to 2016.<sup>197</sup> It also spends a significant amount of money on lobbying efforts.<sup>198</sup> These efforts help the gun lobby defeat legislation by influencing politicians on the inside to vote against bills or to keep bills from being introduced.<sup>199</sup> For example, the use of paid lobbyists on the outside to further encourage politicians to vote or act a certain way and the promise or withdrawal of campaign money hanging over politicians' heads proved to be effective tools of persuasion.<sup>200</sup>

In addition, the NRA and the gun lobby as a whole are part of a broader, cultural opposition to gun control. This opposition includes more people who are in favor of gun rights and are opposed to gun restrictions and who believe owning guns keeps people and homes safer.<sup>201</sup> These perceptions are relatively new,<sup>202</sup> and with each horrific shooting

195. See Buchanan et al., *supra* note 178 (discussing the purchase of dangerous materials made by someone with the intent to perform a mass attack); see also Gladwell, *supra* note 75, at 30, 32 (discussing the purchases of dangerous materials made by someone with the intent to perform a mass attack).

196. See discussion *supra* Sections II.E., III.A.2.

197. *National Rifle Assn: Total Contributions*, OPENSECRETS.ORG, <https://www.opensecrets.org/orgs/totals.php?id=D000000082&cycle=2014> (last visited Feb. 13, 2016).

198. *National Rifle Assn: Lobbying Summary*, OPENSECRETS.ORG [hereinafter *Lobbying*], <https://www.opensecrets.org/lobby/clientsum.php?id=D000000082> (last visited Feb. 13, 2016).

199. See *id.*; see also *Why the Gun Lobby Is Winning*, ECONOMIST (Apr. 4, 2015), <http://www.economist.com/news/united-states/21647627-prevent-gun-deaths-politicians-offermore-guns-why-gun-lobby-winning>.

200. See *Why the Gun Lobby is Winning*, *supra* note 199.

201. Kohut, *supra* note 59; *Growing Support for Gun Rights*, *supra* note 59; see also discussion *supra* Section II.D.

202. Kohut, *supra* note 59.

unable to sway people's opinions, one must wonder if the political agenda has anything, or everything, to do with this. It is no surprise then that gun reforms like the ones suggested above would have a difficult time gaining momentum in Congress, let alone passing into law.<sup>203</sup> Fully addressing how to dismantle the political capital of the gun lobby is worthy of its own complete analysis that is beyond the scope of this Comment, but it is at least necessary to acknowledge this difficult barrier.

## 2. Improving School Climate

Another way to keep students safe in schools without using threat assessments is to improve school climate. School climate is the cumulative perception among teachers, administrators, and students about "the quality and character of school life."<sup>204</sup> A positive school climate exists when schools support students, foster development, and students and adults at school feel cared for and safe.<sup>205</sup>

Laws like the School Safety Act that call for threat assessments and increased police presence in schools are not effective at keeping schools and students safe, despite widely held misperceptions,<sup>206</sup> and will actually work together to have a paramount negative effect on school climate. A better way to keep schools and students safe is to take substantial steps to improve school climate.<sup>207</sup> In fact, even the *Threat Assessment in Schools* guide included a section about improving school climate, calling school climate the "foundation" of safe schools.<sup>208</sup> This demonstrates that even those advocating for threat assessments understand that they are not always necessary, particularly when schools employ alternate practices.<sup>209</sup>

Evidenced practices demonstrate that one of the best ways to improve school climate is to focus on relationships.<sup>210</sup> Relationships are important because they help cultivate an environment of trust where stu-

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203. In fact, in 2013, the 113th Congressional Session introduced the Fix Gun Checks Act of 2013, which proposed two very similar restrictions as the two mentioned above, but did not make it to a vote after dying in committee. See Fix Gun Checks Act of 2013, S. 374, 113th Cong. (2013).

204. NAT'L SCH. CLIMATE COUNCIL, NATIONAL SCHOOL CLIMATE STANDARDS: BENCHMARKS TO PROMOTE EFFECTIVE TEACHING, LEARNING AND COMPREHENSIVE SCHOOL IMPROVEMENT 2, <http://www.schoolclimate.org/climate/documents/school-climate-standards.pdf> (last visited Feb. 13, 2016).

205. *Id.*

206. See discussion *supra* Section III.A.

207. See FEIN ET AL., *supra* note 50, at 9, 11 (calling school cultural climate the foundation to safe schools).

208. *Id.* at 9.

209. *Id.* at 11 ("The threat assessment process by itself is unlikely to have a lasting effect on the problem of targeted school violence unless that process is implemented in the larger context of strategies to ensure that schools offer their students safe and secure learning environments. *The principal objective of school violence-reduction strategies should be to create cultures and climates of safety, respect, and emotional support within educational institutions.*") (emphasis added).

210. ADVANCEMENT PROJECT ET AL., *supra* note 159, at 14.

dents feel comfortable discussing problems they face.<sup>211</sup> Ways to cultivate relationships and improve school climate include implementing alternative conflict resolution programs, connecting students with adults, ensuring respect in those relationships, and encouraging safe and appropriate avenues for students to confide in adults about personal issues or concerns for their peers.<sup>212</sup>

One popular form of conflict resolution that schools use effectively is peer mediation, where students work together with a trained mediator to resolve problems.<sup>213</sup> This form of conflict resolution reduces traditional punishments, such as suspension and expulsion.<sup>214</sup> This is important because harsh disciplinary practices actually interfere with a school's ability to create a positive school climate.<sup>215</sup>

Making efforts to connect students and adults at school, and ensuring that all students have a trusted adult they can confide in, also improves school climate.<sup>216</sup> These relationships help keep schools safe because adults are better able to focus on students' needs, including emotional needs.<sup>217</sup> In addition, strong relationships between students and adults help foster a culture of respect and tolerance, and therefore bullying, shaming, and harassment occur less often.<sup>218</sup> These relationships also enable students to reach out to trusted adults when a peer or they themselves are suffering or struggling.<sup>219</sup> When students feel their voices are heard and the adults in their school care about them, problems that could result in violence are properly addressed and mitigated before they become more serious issues. In addition, this way does not involve the problems associated with threat assessments mentioned above.<sup>220</sup>

## CONCLUSION

Relying on ineffective threat assessments without gun regulation legislation from outside school walls will not keep students safe. Not only will the School Safety Act be ineffective at keeping students safe but it will harm students—particularly special education students, students with mental illness, and students of color—by subjecting them to

211. *Id.*

212. *Id.*; FEIN ET AL., *supra* note 50, at 11–13.

213. Linda Stamato & Sanford Jaffe, *Conflict Resolution at School and on the Playground*, RUTGERS CTR. FOR NEGOT. & CONFLICT RESOL., <http://cnrc.rutgers.edu/conflict-resolution-at-school-on-the-playground/> (last visited Feb. 13, 2016).

214. *Id.*

215. See ADVANCEMENT PROJECT ET AL., *supra* note 159, at 1–2, 15 (urging legislators and administrators to not place more police in schools because of the negative effects it has); see also ELORA MUKHERJEE, *CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS* 27 (2007), [http://www.nyclu.org/pdfs/criminalizing\\_the\\_classroom\\_report.pdf](http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf) (discussing the encroachment of police involvement in school activities).

216. FEIN ET AL., *supra* note 50, at 12.

217. *Id.* at 11–12.

218. *Id.* at 12.

219. *Id.* at 13.

220. *Id.*

constant biased analysis and scrutiny. In addition, threat assessments could push students out of school and into the juvenile and criminal justice systems. To keep students and schools safe, Colorado should instead focus on passing gun regulation legislation to restrict access to guns outside school walls and building positive school climates.

Doing otherwise places the responsibility of safety substantially on the schools and the students, who should not be solely responsible for preventing school violence. If we are serious about keeping students and communities safe, we need to abandon laws that would actually harm students, and make more serious, evidenced based efforts to improve school safety. Then, schools can focus on educating students, knowing the laws in place will not harm them, and are instead effective, robust, and smart laws that will protect them. The School Safety Act was created with good intentions, but it is not enough, and it in fact will move us in the opposite direction of where we need to be.

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